

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4**

COLONIAL PARKING, INC.

Employer

and

Case 4–RC–187843

UNITED FOOD AND COMMERCIAL  
WORKERS LOCAL 27

Petitioner

**REGIONAL DIRECTOR’S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Colonial Parking, Inc., operates parking facilities at various locations in Delaware and Maryland. The Petitioner, United Food and Commercial Workers Local 27, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer’s maintenance associates and a lot auditor. A hearing was held before a Hearing Officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based upon the entire record in this matter and for the reasons set forth below, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization that claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer at the following locations, **excluding** all office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined in the Act:

1. 9<sup>th</sup> Street & French Street, Wilmington
2. 10<sup>th</sup> Street & Washington, Wilmington
3. 12<sup>th</sup> Street & Orange Street, Wilmington
4. 12<sup>th</sup> Street & Washington Street, Wilmington
5. 222 Delaware Ave., Wilmington
6. 401 King Street, Wilmington
7. 510 North King Street, Wilmington
8. 503 S. Market Street, Wilmington
9. 711 Orange Street, Wilmington
10. 713 Shipley Street, Wilmington
11. 903 Shipley Street, Wilmington
12. 1000 King Street, Wilmington
13. 1201 N. Market Street, Wilmington

The sole issue presented at the hearing is whether the election should be conducted manually or by mail ballot. Election arrangements, including the voting method, are not matters within the scope of a pre-election hearing. Pursuant to its longstanding practice, the Board has left such determinations to the discretion of the Regional Director. *2 Sisters Food Group, Inc.*, 357 NLRB 1816, 1819 (2011); *Halliburton Services*, 265 NLRB 1154, 1154 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367-1368 (1954). See also NLRB Casehandling Manual (Part Two), Representation Proceedings Sections 11228, 11301.4. The election arrangements are set forth in this Decision under “Election Details.”

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers Local 27.

#### **A. Election Details**

I have determined that a mail ballot election will be held because the employees in the proposed bargaining unit work at 13 separate locations, and are thus scattered. In such situations, the Board has recognized that mail balloting is appropriate. *San Diego Gas & Electric*, 325

NLRB 1143, 1145 (1998). Moreover, where other factors favor mail balloting, the economic and efficient use of Board Agents is reasonably a concern. *Id.* at 1145, fn. 8; *Williamette Industries*, 322 NLRB 856 (1997). While the Employer proposed that a manual election be conducted at a single location, it appears, based on the voter lists submitted by the Employer with its Statement of Position, that none of the employees in the proposed unit work at that location. Thus, all would be required to walk or drive to that location to vote. In these circumstances, where employees are dispersed over numerous worksites in the city of Wilmington, Delaware and it is not feasible to conduct voting sessions at all of the worksites, it is appropriate to conduct a mail ballot election.

The ballots will be mailed by 5:00 pm on **Tuesday, December 6, 2016** to employees employed in the appropriate collective-bargaining unit. Ballots will be mailed to voters from the National Labor Relations Board, Region 4, 615 Chestnut Street, Philadelphia, PA 19106. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Voters must return their mail ballots to the Region 4 office by close of business on **Tuesday, December 27, 2016**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **December 13, 2016**, should communicate immediately with the National Labor Relations Board by either calling the Region 4 Office at 215-597-1542 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 4 Office at 615 Chestnut Street, Philadelphia, Pennsylvania on **Wednesday, December 28, 2016** at 2:00 pm. In order to be valid and counted, the returned ballots must be received in the Region 4 Office prior to the counting of the ballots.

## **B. Voting Eligibility**

Eligible to vote are all unit employees employed during the payroll period ending **November 23, 2016**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, December 5, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those

employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: *December 1, 2016*

/s/ Dennis P. Walsh

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DENNIS P. WALSH  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 04  
615 Chestnut St Ste 710  
Philadelphia, PA 19106-4413